

May 11, 2004

To Whom It May Concern:

This is in response to your request for information about the federal Clean Air Act requirements for marketing aftermarket parts and systems.

The federal tampering prohibition is contained in section 203(a)(3) of the Clean Air Act (Act), 42 U.S.C. 7522(a)(3). Section 203(a)(3)(A) of the Act prohibits any person from removing or rendering inoperative any device or element of design installed on or in any motor vehicle in compliance with regulations under Title II of the Act (i.e., regulations requiring certification that vehicles meet federal emissions standards). The maximum civil penalty for a violation of this section by a manufacturer or dealer is \$27,500; for any other person, \$2,750.

Section 203(a)(3)(B) of the Act prohibits any person from manufacturing or selling, or offering to sell, or installing, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine, and where the person knows or should know that such part or component is being offered for sale or is being installed for such use. The maximum civil penalty for a violation of this section is \$2,750.

Accordingly, any change from the original certified configuration of a vehicle or engine, or the manufacture or sale of a non-original equipment aftermarket part or system could be considered a violation of section 203(a)(3) of the Act. This would include modifications to the fuel delivery system. However, the Environmental Protection Agency (EPA) has established an enforcement policy, Mobile Source Enforcement Memorandum No. 1A (Memorandum 1A), to provide guidance to the

public to reduce the uncertainty regarding potential liability under section 203(a)(3) of the Act for using or selling aftermarket parts or systems, or making adjustments or alterations to parts or system parameters. Memorandum 1A is at <http://es.epa.gov/oeca/ore/aed/comp/jcomp/j1.html>. On September 4, 1997, EPA issued an Addendum to Memorandum 1A which applies specifically to aftermarket alternative fuel conversions.

Basically, Memorandum 1A states that we will not consider any modification to a certified emissions control configuration to be a violation of the tampering prohibition if there is a reasonable basis for knowing that emissions are not adversely affected. In many cases, durability aging and emissions testing according to the Federal Test Procedure would be necessary to make this determination.

As written, Memorandum 1A is directed only to dealers and vehicle and engine manufacturers. However, in 1977 and again in 1990, section 203(a)(3) was amended and the tampering prohibition now extends to "any person." Consequently, the policy enunciated in Memorandum 1A has been extended to apply to any person.

EPA does not have a mandatory, formal program to evaluate and make determinations of compliance of aftermarket parts with Memorandum 1A. Although EPA has informally evaluated compliance information in the past, because of budget cuts and resource constraints, at the present time, we are not reviewing information concerning compliance with Memorandum 1A. While compliance with Memorandum 1A is required, submission of the information to us is not required unless we request the information to verify compliance. We emphasize, however, that our lack of review of the information does not relieve any one from responsibility to comply with Memorandum 1A or liability for violations of section 203(a)(3) and Memorandum 1A.

EPA does not issue exemptions or approvals concerning the sale or use of aftermarket parts or systems which a manufacturer or marketer represents as satisfying the requirements of Memorandum 1A. If a part or system satisfies Memorandum 1A, the manufacturer or marketer of such part or system may make that representation based on its own testing effort and engineering judgment. A list of items which would be necessary to demonstrate that aftermarket parts or modifications comply with Memorandum 1A is enclosed. This list should not be considered a

complete, comprehensive list, but rather a minimum list of items that would normally be necessary to show compliance.

Under paragraph 3(c) of Memorandum 1A, EPA does accept determinations by state or local environmental control agencies (if reasonably supported) which have expressly represented that a reasonable basis exists to believe that emissions performance would not be adversely affected. EPA is only obligated to accept these determinations as meeting the requirements of Memorandum 1A in the "geographic area over which the state or local agency has jurisdiction." The State of California does have a program to evaluate aftermarket parts that are going to be marketed in California and you may want to contact them. The California Air Resources Board (CARB) or other state determinations of a reasonable basis for compliance with federal policy do not automatically extend to other states.

In the past, we have found CARB determinations of reasonable basis generally to be technically sound and have accepted them as meeting the requirements of Memorandum 1A for the installation of the subject parts and systems nationwide and not just in California.

Except for aftermarket converter determinations and, more recently, the exceptions outlined in the Addendum to Memorandum 1A for alternative fuel conversions, our enforcement policy has been and continues to be to accept CARB's aftermarket parts determinations as meeting the reasonable basis criteria of Memorandum 1A. However, we reserve the right to review and reverse our decision on any such determination if there is any information about individual parts or systems or the CARB review process which suggests that the CARB decision may not have been based on sound engineering information or judgment. Failure of a part manufacturer, seller, or installer to submit information upon request by EPA will automatically revoke this determination.

Such determinations do not constitute certifications, accreditations, approvals, or any other type of endorsement by EPA of any claims concerning pollution control or any other alleged benefits of the subject parts or systems. No claim of any kind, such as "Approved [or certified] by Environmental Protection Agency," may be made with respect to any actions taken in any advertising or other oral or written communication.

Furthermore, these determinations are generally subject to all the limitations set out in the CARB Executive Orders.

In 4(b) of Memorandum 1A, EPA expressly reserved the right to proscribe, in the future, an act such as the installation of a certain device, system or modification as prohibited by the federal tampering prohibition. Such proscription, if appropriately published, would be deemed conclusive that such an act will adversely affect emissions performance and the use of the affected device, therefore, would constitute a violation of section 203(a)(3) of the Act.

You should be aware that, in addition to the federal tampering prohibition, states other than California have tampering prohibitions or inspection requirements which may be interpreted as prohibiting the installation of certain aftermarket parts or aftermarket modifications. You may wish to contact the State Attorney General's office or the vehicle inspection program office in each state in which sales and/or installations are anticipated.

We would also recommend that potential customers always be informed that the installation and use of parts or systems that are materially different than the original equipment parts or systems may void any original manufacturer's warranties.

In addition, you should be aware that these determinations do not exempt the manufacturer or any installers from any obligations, liabilities and/or responsibilities which may apply if the manufacturer or installer can be considered a "manufacturer" of motor vehicles or engines as defined in section 216 of the Clean Air Act.

As you may know, EPA published an enforcement policy on the sale and use of aftermarket catalytic converters on August 5, 1986, which is applicable and supersedes Memorandum 1A with respect to the sale and use of new and used aftermarket catalytic converters which are being used as direct replacement converters for light-duty, gasoline vehicles. This policy would not apply to heavy-duty or diesel fueled vehicle catalysts. Aftermarket converters are required to comply with this policy.

As you also may know, on August 8, 1989, EPA published in the Federal Register a final rule amending the Voluntary Aftermarket Parts Self-Certification regulations in 40 CFR Part

85, Subpart V (See 54 FR 32566). The regulations allow actual "certification" of aftermarket emissions related parts such as fuel economy, performance or other emissions related parts. The installation of parts "certified" under this program would not be considered violations of federal law. For more information on this program, you should contact Mr. Fred Hart at (734) 214-4877.

I hope this sufficiently responds to your request. If you have any further questions concerning this matter, please contact me at (202) 343-9671.

Sincerely,

Steve Albrink  
Certification & Compliance Division  
Office of Transportation & Air Quality

Enclosure

Information Necessary for  
Compliance with Memorandum 1A

1. Table of Contents for data.
2. Mileage of vehicles involved, including data on vehicle configuration and fuel use during mileage accumulation.
3. Configuration and fuel use of vehicles during each test, baseline original equipment (OE), baseline after modification with OE fuel specifications and modified with alternative fuel use (if applicable).
4. Complete description of modification installation requirements for parts or kit. A statement from installer of the parts on the test vehicles that instructions were adhered to should be included.
5. Complete descriptions of all the vehicles involved including engine families of the vehicles and engines, make, model, year and type and configuration of the emission control system along with a statement whether the system is set to original manufacturer's specifications.
6. Description of test procedures used for each vehicle and each test.
7. Any aging procedures and durability data.
8. All test results and records for all testing performed verified by the test laboratory manager.
9. Test and data logs including mass data sheets for the tests.
10. All scheduled and unscheduled maintenance information.
11. Identify which results correspond to which vehicle configurations.
12. Name and address of test laboratory.

13. Dates, lab technicians, and supervisors involved in the testing.

14. Any engineering analysis or reports to support the conclusions reached that the vehicles meet emission standards.

15. Any other data or information which may have any bearing on the results or conclusions of a determination about any of the vehicles' or engines' ability to comply with federal emission standards.

16. List of all parts installed and modifications performed to each vehicle.